CODED (DE-IDENTIFIED) PRIVATE INFORMATION OR BIOSPECIMENS OR ANONYMIZED SAMPLES OR DATA

6/18/2024

I. OVERVIEW

This policy applies to projects involving coded private information or human biological specimens ("coded specimens/data"). This policy applies only to the secondary use of data and/or specimens collected for purposes other than those of the currently proposed research application. This would include, for example, data and/or specimens collected for:

- Standard clinical and/or quality improvement (QI) purposes
- Previously approved research studies, OR
- Data and/or specimens from repositories

Additionally, the data and/or specimens may have been collected in the past or may be collected in the future.

II. DEFINITIONS

1. **Coded –** OHRP defines "coded" to mean that identifying information (such as name or social security number) that would enable the investigator to readily ascertain the identity of the individual to whom the private information or specimens pertain has been replaced with a number, letter, symbol, or combination thereof (i.e., the code), and that a key to decipher the code exists, enabling linkage of the identifying information to the private information or specimens.

   HIPAA further defines "coded" to mean that:

   - The code or other means of record identification is not derived from or related to information about the individual and is not otherwise capable of being translated so as to identify the individual, AND
   - The covered entity does not use or disclose the code or other means of record identification for any other purpose, and does not disclose the mechanism for reidentification.

   This language makes it impossible to use an encrypted identifier, or such combinations as Initials and Date of Birth as the code. To comply with both OHRP and HIPAA regulations, the code cannot be part of the source specimen data or information database.

2. **De-identified** – The data or biospecimens do not contain any identifiable information, but there is a way to link the information back to identifiable information. (Note: DUHS IRB uses this term in the same manner as "coded").

3. **Anonymized** – The data or biospecimens do not contain any identifiable information and there is no way to link the information back to identifiable information.

4. **Health Information –** Any information, including demographic information and genetic information, whether oral or recorded in any form or medium, that:

   - Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
   - Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

5. **Honest Broker (HB) -** A "neutral intermediary" (person or system) between the individual whose specimens and/or data are being studied, and the researcher. The HB collects and collates pertinent information regarding the specimen/data source, replaces identifiers with a code, and releases only coded specimens/data to the researcher. The HB has access to the source specimens/data that retain an identifier. When requests are made to use specimens/data for research purposes, the HB is responsible for extracting, coding, and creating the coded specimens/data set from the source specimens/data and following the other procedures required by the IRB.

   The HB must not be involved in the research being proposed (beyond creating the coded specimen/data set for use by the PI and other key personnel). If the HB is using PHI only for creating the code specimen/data set and is not participating in the research, under HIPAA their activities are considered part of health care operations (45 CFR 164.501(6)(v), thereby permitting their use or disclosure of the PHI without waiver of authorization (45 CFR 164.502(a)(1)(ii)). The HB is the only person who has long-term access to the full subject identifiers and health information from the source specimens or information database.

6. **Identifiable Private Information -** OHRP regulations define identifiable private information as private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information.

   Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute

research involving human subjects.

7. **Individually Identifiable Health Information –** This is a subset of health information, including demographic information collected from an individual, and that:

    - Is created or received by a health care provider, health plan, employer, or health care clearinghouse, AND
    - Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual, AND
    - That identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual.

8. **Principal Investigator (PI).** This person is responsible for conducting the research study in compliance with the terms of the IRB determination, including when/if the IRB determines the project is not human subject research. The PI and other key personnel are the only people who have long-term access to the data or specimen set for research purposes.

9. **Private Information -** Information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (e.g., a medical record).

10. **Protected Health Information –** Individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium.

    Protected health information excludes individually identifiable health information in the following:

    - In education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;
    - In records described at 20 U.S.C. 1232g(a)(4)(B)(iv)
    - In employment records held by a covered entity in its role as employer
    - Regarding a person who has been deceased for more than 50 years

11. **Source Specimen/Data -** These are the PHI specimens/data that are collected for clinical or research purposes, from which coded data sets are extracted for specific research projects.

12. **Unique Identifier -** These are the identifiers, unique to an individual subject that link the code to the subject and, in turn, may be used to identify and/or extract the subject's specimen or data record. For example, it could be the medical record number (MRN), a combination of the MRN and account

number, or an identifier internal to the source specimen data or information database.

13. Commercially available - "Commercially available" means the specimen may be purchased from a commercial vendor outside of Duke. An academic-affiliated institution or non-profit does not meet the definition of "commercially available."

III. APPLICABILITY

In accordance with OHRP, private information or specimens are not considered individually identifiable when they cannot be linked to specific individuals by the investigator either directly or indirectly through coding systems. As such, research using coded specimens/data is generally not considered *research involving human subjects* if the following conditions are met:

- The private information or specimens were not collected specifically for the currently proposed research project through an interaction or intervention with living individuals, and
- the investigator(s) cannot readily ascertain the identity of the individual(s) to whom the coded private information or specimens pertain because, for example:
    - the investigators and the holder of the key enter into an agreement prohibiting the release of the key to the investigators under any circumstances
    - there are IRB-approved written policies and operating procedures for a repository or data management center that prohibit the release of the key to the investigators under any circumstances, or
    - there are other legal requirements prohibiting the release of the key to the investigator.

The data and/or specimens may not be collected through any interaction or intervention with living individuals for the primary purpose of use in the currently proposed research project.

Research that uses only coded specimens/data may be determined to be research not involving human subjects, and therefore not subject to continuing IRB review.

IV. IRB OVERSIGHT

Investigators conducting human subject research at DUHS are subject to IRB oversight, including for projects deemed exempt under the federally recognized categories of exemption. Projects that do not meet the definitions of "human subjects" and/or "research", such as with the use of coded specimens/data, should submit an application to the IRB for review. Such an application follows the Exempt workflow through the electronic application system. The IRB will issue an outcome determination of either Exempt – Not Human Subjects or

Exempt – Not Research.

When submitting such an application, the investigator must describe the proposed project in detail and the methods that will be used to protect the privacy of the subjects and the confidentiality of the specimens/data.

Once submitted to and reviewed by the IRB, the PI must notify the IRB if, during the course of the project, any changes are proposed. At that time, the IRB will decide whether or not the status of the project as not involving human subjects or not involving research can continue.

Additionally, all key personnel are expected to meet institutional training requirements for Duke Health researchers (CITI modules).

A limited exception to the requirement of IRB oversight:

Laboratory research with *commercially available* anonymized tissue specimens, cell lines, or other human cells does not meet the definition of "research involving human subjects" and may be performed without submission to the IRB. This limited exception does not apply to work that is FDA-regulated and/or to research that is federally-funded for which the funding agency requires IRB review.

V. IRB APPLICATION, IRB REVIEW, AND STUDY CONDUCT

A. Application

When the Principal Investigator submits a study using coded specimens and/or data to the IRB, the IRB application should include the following information:

- The Principal Investigator verifies that they:
  - Will not attempt or direct others to attempt to identify subjects in the coded specimen/data set nor ask the HB to identify subjects
  - Do not oversee the work of the designated HB for the proposed study
  - Will notify the IRB if any changes are proposed in the research study that might alter the IRB's determination or HIPAA compliance related to the study.
- The Honest Broker (HB) verifies that they:
  - Have or will possess the coded specimens/data derived from the code together with the unique identifier(s) for subjects in the extracted data for the PI, initially or subsequently
  - Will not reveal the code together with the unique identifiers to the PI, to other key personnel for the proposed study, or to anyone outside DUHS unless approved by the IRB
  - Does not work with or directly report to the PI or other key personnel for the proposed study and will not be involved in the proposed project.

B. Review and Determination

An IRB Chair/Vice Chair will review the proposed research and assurances from the PI and HB to ensure the proposed research does not involve human subjects. If not covered by an existing grant or research agreement, the Chair/Vice Chair may also request or identify the need for a data use agreement (DUA) to ensure compliance with HIPAA requirements or a material transfer agreement (MTA) to govern the provision or receipt of biospecimens. The PI/study team will be directed to work with Duke's Office of Research Contracts (ORC) to obtain the appropriate agreements. Though DUAs and MTAs do not need to be submitted to the IRB, the investigator must confirm that they will not begin study activities until the agreements are fully executed, and IRB approval is in place.

C. Study Conduct

The Honest Broker will:

(a) Extract from the source specimens or information database that portion of the data/specimens that has been requested by the Principal Investigator (PI) for a given study, plus unique identifiers for each subject

(b) Add a code for each subject to the extracted data, if not already assigned (e.g., barcode- labeled specimens)

(c) Create the limited data set (if applicable) from the extracted data according to HIPAA [45 CFR 164.514(e)] and retain the code

(d) Send the coded limited data set and/or biospecimens to the PI

(e) If 1) additional specimens or data for subjects in the original limited data set or 2) additional subjects with a limited data set/specimens are requested by the PI after the initial request has been fulfilled, the HB will extract the additional specimens or data, create a new coded limited data set, and send the new coded limited data set and/or biospecimens to the PI.

The Principal Investigator (PI) will conduct the study using only the coded limited data set and/or biospecimens obtained through the process described above. The PI will notify the IRB if any changes arise during the conduct of the study that might alter the IRB's determination or HIPAA compliance related to the study.

Previous Version Date(s): 5/15/2008, 3/1/2016, 4/22/2021